

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
for Expedited Approval under Public Utilities  
Code Section 851 For An Easement from PG&E  
Allowing Placer County Water Agency to Install  
and Maintain Water System Facilities on PG&E  
Property and for Related Access.

(U 39 M)

Application 01-11-023  
(Filed November 14, 2001)

**DECISION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE  
SECTION 851 FOR CONVEYANCE OF EASEMENTS BY PG&E  
TO PLACER COUNTY WATER AUTHORITY****1. Summary**

This decision grants the unopposed application<sup>1</sup> of Pacific Gas and Electric Company (PG&E) for Commission authorization under Pub. Util. Code § 851<sup>2</sup> for PG&E to convey easements across its property to Placer County Water Agency (PCWA). These easements are necessary for PCWA to install, maintain, and operate water pipeline facilities to serve low-income residents of properties located on Merry Knoll Road (the project) in unincorporated Placer County and

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<sup>1</sup> The application was filed on November 14, 2001. In Resolution ALJ 176-3076 dated November 29, 2001, we preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings are unnecessary. No protests to the application were filed.

<sup>2</sup> All statutory references are to the Public Utilities Code unless otherwise referenced.

to thereby provide these residents with improved water quality. Our decision on this matter is expedited based on PG&E's representations that in order for PCWA to retain its Community Development Block Grant (CDBG) funding for the project, PCWA must obtain these easements promptly so that PCWA may adhere to the project schedule.

## **2. Background**

### **A. The Parties**

PG&E is a public utility corporation that provides gas and electric service in California and is subject to Commission regulation.

PCWA is a local public agency that is self-governed by an elected Board of Directors. PCWA's water system, established in 1968, serves more than 35,000 accounts and approximately 150,000 persons in homes, businesses, industry, and agriculture in the vicinity of Auburn, Colfax, Loomis, Rocklin, portions of Roseville, and in large unincorporated areas of Placer County. In addition to selling water directly to customers in its service area, PCWA sells treated water wholesale and raw water to other local public agencies.

### **B. The Project**

The project involves the installation of approximately 5,200 linear feet of water pipelines on Mount Vernon Road and Merry Knoll Road in the City of Auburn and in an unincorporated portion of Placer County. In order to avoid underground utilities at the intersection of Merry Knoll Road and Mount Vernon Road, the pipelines must cross three parcels owned by PG&E on Merry Knoll Road. PCWA therefore needs three easements from PG&E to proceed with the project. The PG&E property involved in the proposed easements is part of PG&E's hydroelectric generation facilities.

The project will provide water service and improved water quality to low-income persons who live on Merry Knoll Road. These persons have previously been utilizing well water and water from untreated sources.

PCWA has received CDBG funding for the project through Placer County. In order to retain its CDBG funding, PCWA must complete a number of project milestones, including advertising for construction bids in January 2002.<sup>3</sup> The terms of PCWA's CDBG grant require PCWA to obtain all necessary easements and submit documentation to CDBG before soliciting construction bids. PCWA has represented that unless it obtains the easements by early January 2002, PCWA will lose its CDBG funding and must compete with other proposals for a future grant, with uncertain prospects for success.<sup>4</sup> The economic feasibility of PCWA's provision of treated water to low-income Merry Knoll residents depends on the availability of CDBG funding.

### **C. The Proposed Agreement between PG&E and PCWA**

PG&E has filed a proposed easement agreement with PCWA to be executed if the Commission approves this application. In the agreement, PG&E

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<sup>3</sup> PCWA will also need to form an improvement district to fund other project costs before awarding the construction contract. In order to initiate formation of the improvement district, PCWA must obtain an engineer's report, which analyzes the costs and benefits of the project, and submit the report to property owners within the proposed improvement district boundaries. The engineer's report cannot be finalized until PCWA has obtained all necessary easements.

<sup>4</sup> PG&E represents that it did not file the application earlier, because PCWA had previously understood that the project could be constructed in public streets maintained by the City of Auburn and the County of Placer without the need for easements. However, a property owner subsequently informed PCWA that Placer County did not have a dedicated right of way. Upon confirming this information, PCWA learned that it needs to obtain 35 easements for the project, including the 3 easements from PG&E addressed in this application.

grants a non-exclusive easement to PCWA to construct, install, repair, replace, and maintain a water pipeline not exceeding 12 inches in diameter. PGWA has agreed to install and maintain the pipeline in a manner that does not reduce the required vertical distance between PG&E's transmission lines and the ground pursuant to General Order (G.O.) 95 and G.O. 112-E. PG&E has reserved the right to use the easement area for all purposes related to Federal Energy Regulatory Commission (FERC) Project No. 2310 and as appropriate to provide service to PG&E customers. Under the agreement, PCWA may not use the easement area in a way that endangers public health and safety, creates a nuisance, or is incompatible with applicable FERC orders and Commission G.O.s and decisions.<sup>5</sup> PCWA will pay a one-time fee of \$9,700 for the easements.

#### **D. Environmental Review**

The California Environmental Quality Act (Public Resources Code Section 21000, et seq., hereafter "CEQA"), applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential, significant environmental effects of the proposed activities." (Title 14 of the California Code of Regulations, hereinafter "CEQA Guidelines," Section 15002.)

Since the proposed project is subject to CEQA and the Commission must issue a discretionary decision without which the project cannot proceed (i.e., the Commission must act on the Section 851 application), this Commission must act as either a Lead or a Responsible Agency under CEQA. The Lead Agency is the

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<sup>5</sup> Specifically, PCWA cannot use the easement area in a manner incompatible with overall project use pursuant to Paragraph (C) of FERC Order 313. PCWA's use of the property is also subject to Commission G.O.s 69-C, 95, and 128, as well as the Commission's decision in this proceeding.

public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines Section 15051(b)).

In this instance PCWA is the Lead Agency for the proposed project. PCWA performed an initial study of the project and approved a negative declaration on December 7, 2000. The negative declaration found that the project would result in no significant environmental effects and that no mitigation measures or alternatives were required. PCWA filed the Notice of Determination on December 13, 2000. Copies of the initial study and negative declaration are attached as Appendix A to the application.

The Commission is a Responsible Agency for this proposed project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency's Environmental Impact Report or Negative Declaration prior to acting upon or approving the project (CEQA Guideline 15050(b)). The specific activities which must be conducted by a responsible agency are contained in CEQA Guideline Section 15096.

We have reviewed and considered the initial study and negative declaration prepared by PCWA and find that these documents are adequate for our decision-making purposes under CEQA. We find that the Lead Agency reasonably concluded that the conveyance of the proposed easements by PG&E to PCWA for the project will have no significant environmental effect and that no mitigation measures or consideration of alternatives were required.

#### **E. Ratemaking Considerations**

The PG&E land involved in the proposed easements is part of PG&E's hydroelectric generation facilities and is therefore considered non-nuclear

generation-related property. Compensation received by PG&E from PCWA for the easements would be credited to Other Operating Revenue according to the accounting guidelines established for the Transition Cost Balancing Account (TCBA). This treatment of revenues from the proposed easements is unopposed.

### 3. Discussion

Section 851 provides that no public utility “shall . . . encumber the whole or any part of . . . property necessary or useful in the performance of its duties to the public, . . . without first having secured from the commission an order authorizing it to do so.” Since the easements proposed to be conveyed to PCWA would be encumbrances on PG&E property, we must apply Section 851 in considering this application.<sup>6</sup>

The primary question for the Commission in Section 851 proceedings is whether the proposed transaction is adverse to the public interest. In reviewing a Section 851 application, the Commission may “take such action, as a condition to the transfer, as the public interest may require.”<sup>7</sup> The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.<sup>8</sup>

We find that PG&E’s conveyance of the proposed easements to PCWA would serve the public interest. The proposed easements will not interfere with PG&E’s use of the property or with service to PG&E customers, and will be utilized in a manner consistent with FERC and Commission requirements.

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<sup>6</sup> D.01-08-069.

<sup>7</sup> D.3320, 10 CRRC 56, 63.

<sup>8</sup> D.00-07-010 at p. 6.

PG&E's conveyance of the easements to PCWA would also serve the public interest by enabling PCWA to provide improved water service and quality to low-income residents who live in the vicinity of Merry Knoll Road.

We also approve of the proposed ratemaking treatment for the compensation that PCWA will pay to PG&E for the easements. Since this land is part of PG&E's hydroelectric generation facilities, it is consistent with previously established guidelines that the revenue be credited to the Other Operating Revenue sub-account of the TCBA.

#### **4. Conclusion**

For all of the foregoing reasons, we grant the application of PG&E pursuant to Section 851, effective immediately.

#### **5. Final Categorization and Waiver of Review Period**

Based on our review of this application, we conclude that there is no need to alter the preliminary determinations as to categorization and need for a hearing made in Resolution ALJ 176-3076 (November 29, 2001). Moreover, since this proceeding is uncontested and we grant the relief granted, pursuant to Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

#### **Findings of Fact**

1. Our consideration of this application is expedited based on representations that PCWA must obtain the easements by early January 2002 in order to retain its CDBG funding for installation of the pipeline.
2. The proposed easements will not interfere with PG&E's use of the property or with service to PG&E's customers, and will be utilized in a manner consistent with FERC and Commission requirements.
3. PCWA is the Lead Agency for the proposed project under CEQA.

4. PCWA conducted an initial study of the project pursuant to CEQA.
5. In approving the project, PCWA adopted a negative declaration on December 7, 2000, which found that the project would cause no significant environmental effects.
6. PCWA filed a Notice of Determination on December 13, 2000.
7. The Commission is a Responsible Agency for the proposed project under CEQA.
8. Consistent with the Lead Agency's findings and determination, we find that no significant environmental effect will result from the project.
9. Compensation received by PG&E from PCWA for the proposed easements will be credited to Other Operating Revenue according to accounting guidelines established for the TCBA.
10. The project will enable PCWA to provide improved water service and quality to low-income residents who live in the vicinity of Merry Knoll Road.

### **Conclusions of Law**

1. The negative declaration prepared by PCWA is adequate for the Commission's decision-making purposes as a responsible agency.
2. Consistent with Section 851, PG&E's conveyance of the three proposed easements to PCWA for the project will serve the public interest and should be authorized.
3. The decision should be effective today in order to allow the easements to be conveyed to PCWA expeditiously.



**O R D E R**

**IT IS ORDERED** that:

1. Pacific Gas and Electric Company (PG&E) is authorized to convey three easements across its property located on Merry Knoll Road to Placer County Water Agency. When the final easement documents are executed, PG&E shall submit a copy by advice letter filing within sixty (60) days of this order.

2. PG&E shall credit the fees of \$9,700 to the Other Operating Revenue sub-account of the Transition Cost Balancing Account.

3. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.